

contributing to a performance or conduct deficiency, the manager/supervisor shall recommend counseling and refer the employee to the agency counseling program. If an employee fails to participate in any rehabilitative program or, having participated, the employee fails to bring conduct or performance up to satisfactory level, the agency shall evaluate the employee accordingly and initiate an appropriate performance-based or adverse action.

(d) As requested, agencies shall annually submit a report to OPM on their counseling activities for the past fiscal year at a time, and in a manner, set by OPM.

[49 FR 27921, July 9, 1984, as amended at 50 FR 16692, Apr. 29, 1985]

### **Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?**

SOURCE: 65 FR 13660, Mar. 14, 2000, unless otherwise noted.

#### **§ 792.200 To whom do “we”, “you”, and their variants apply?**

Use of pronouns, “we,” “you,” and their variants throughout this part refers to the agency. OPM is always referred to as “OPM”.

#### **§ 792.201 What does the new law permit?**

Public Law 106–58 (113 Stat. 477) permits agencies to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries, to improve the affordability of child care for lower income Federal employees. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

#### **§ 792.202 What is the purpose of the new law?**

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

#### **§ 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?**

Yes, you must provide notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees prior to the obligation of funds. This is a Congressional notification requirement. You must also notify OPM of your intention. Funds can be obligated immediately after notifications have occurred.

#### **§ 792.204 Are there sample memoranda and other documents available to assist us with this process?**

Yes, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. These materials can be found in “Guide for Implementing Child Care Legislation—Pub. L. 106–58, Sec. 643.” The Guide is available on OPM’s website, <http://www.opm.gov/wrkfam>. You may also obtain a copy by writing to OPM at: U.S. Office of Personnel Management, Family-Friendly Workplace Advocacy Office, 1900 E Street, NW., Room 7315, Washington, DC 20415.

#### **§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?**

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

#### **§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?**

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings

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in recruitment and training can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers may help to increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

### **§ 792.207 Which agency funds can be used for the purpose of this law?**

You are permitted to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries and expenses.

[66 FR 705, Jan. 4, 2001]

### **§ 792.208 Are agencies required to participate in this program?**

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.207.

### **§ 792.209 How can agencies take advantage of this new law and when does this law become effective?**

The law became effective as of September 29, 1999. Agencies are permitted to obligate funds beginning on March 14, 2000. Agencies can take advantage of this new law by notifying Congress and OPM of their intent.

### **§ 792.210 What is the definition of Executive agency?**

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

### **§ 792.211 What is the definition of tuition assistance program?**

The term *tuition assistance program*, for the purposes of this subpart, means the program that results from the expenditure of agency funds to assist lower income Federal employees with

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child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

### **§ 792.212 What is the definition of civilian employee?**

The term *civilian employee*, for the purposes of this subpart, means all appointive positions in an Executive agency.

### **§ 792.213 What is the definition of a Federally sponsored child care center?**

The term *Federally sponsored child care center*, for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal government.

### **§ 792.214 What is the definition of contractor?**

Sec. 643 of Public Law 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. Child care *providers* that may provide services under contract include center-based child care and family child care homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term *provider* is used to denote both center-based child care and family child care homes.

### **§ 792.215 What is the definition of a child?**

For the purposes of this subpart, a *child* is considered to be:

- (a) A biological child who lives with the Federal employee;
  - (b) An adopted child;
  - (c) A stepchild;
  - (d) A foster child;
  - (e) A child for whom a judicial determination of support has been obtained;
- or